Supreme Court, U. S.
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-49

JOSEPH LISCHKO,
Petitioner,

v.

ROBERT J. GALLI, Sheriff of Washoe County,
State of Nevada,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONSE TO BRIEF OF RESPONDENT IN OPPOSITION

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Petitioner feels compelled to respond to the Brief of Respondent in Opposition for the reason that respondent states that there was a "*de novo* evidentiary proceedings conducted at the federal level upon Mr. Lischko's petition for writ of habeas corpus".

This is not the fact.

The fact is that in his Petition for Habeas Corpus, in Paragraph VII thereof, the following request was made to the Federal District Court:

"Because of the foregoing petitioner is being restrained of his liberty by the State of Nevada in violation of the Constitution of the United States and he therefore prays that a Writ of Habeas Corpus be granted; that at the time of the hearing of the Writ he be permitted to offer evidence in addition to that presented before the State Court on the question of competency of counsel at the trial of his case; and further that he be allowed to introduce at the hearing on the Writ a transcript of the testimony taken before Judge Emile Gezelin of the State District Court in and for the County of Washoe in the Post-Conviction Relief hearing, together with copies of all exhibits admitted before Judge Gezelin at that hearing."

That the respondent opposed the request to offer evidence in addition to that presented to the trial court and the court then ruled that an evidentiary hearing would be held.

It was never understood by petitioner or his counsel the writer of this reply brief, that a full scale hearing would be had and it appears from the record the complaining witnesses, Dean Petersen and his sister, were not called. Neither were numerous other witnesses that appeared at the trial. Petitioner and his counsel, believing that this was a hearing limited to adding testimony to what was taken before the state trial judge, Judge Gezelin, did not present a full scale hearing before the Federal District Judge.

Since the only person who observed the conduct of Petitioner's counsel at his trial and observed the con-

duct of the complaining witnesses and other witnesses at that trial, it is doubtful that a full scale hearing before the Federal District Court could now fairly be had. The question of the credibility of the petitioner referred to by the Federal District Judge is not an issue and would only become an issue if petitioner is granted the new trial which he had been seeking, at which time he can be granted a full scale hearing in the appropriate form.

The Writ should be granted.

Dated, Reno, Nevada,
August 24, 1976.

Respectfully submitted,
VARGAS, BARTLETT & DIXON,
JOHN C. BARTLETT,
Attorneys for Petitioner.